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PRINT MEDIA TREATMENT OF HATE AS AN AGGRAVATING CIRCUMSTANCE FOR SENTENCING:
A Case Study

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The views expressed in this report are those of the author and do not necessarily represent the views of the Department of Justice Canada.

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The Context of Hate

- Hate and bias crimes represent a serious affront to individuals and groups who experience their deleterious affects. In addition to the harm they inflict upon the individual, hate-motivated activities undermine the societal goals of promoting a just, fair, equitable and socially cohesive society.
- Since the early 1990s, the federal government, in consultation with community and non-governmental organisations, has struggled to find appropriate methods for combating hate-motivated activities. In 1995, Parliament introduced sentencing reforms to assist judges with sentencing decisions. Included in these reforms was a statutory provision requiring that judges consider "bias or hate motivation" as an aggravating sentencing circumstance.
- Subparagraph 718.2(a)(i) of the *Criminal Code*, which came into force in September 1996, states that "*evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor*" shall be deemed an aggravating circumstance.
- To date, the most important case relevant to subparagraph 718.2(a)(i) has been *R.* v. *Miloszewski*, [1999] B.C.J. No. 2710 (B.C. Prov. Ct.). In January 1998, Nirmal Singh Gill died following an attack in the parking lot of the Guru Nanak Temple in Surrey, British Columbia. Five men, described as having links to White Power – a white supremacist skinhead group – were arrested, and subsequently convicted of manslaughter. Many observers suggest the decision in this case was precedent setting and will impact future decisions concerning hate motivated crimes.

Purpose of Paper

- The purpose of this paper is to conduct a case study analysis of the newspaper coverage of *Miloszewski*. The paper explores the print media portrayal of subparagraph 718.2(a)(i), focusing on whether codification of the aggravating sentencing circumstance influenced newspaper reporting. The paper also explores how the print media interpreted the *Miloszewski* case, and represented the decision to the readers.

Findings

- A total of 62 newspaper items[1] were found that related to the *Miloszewski* case. The principal information sources contained in these news items were government/institutional spokespersons (e.g., police officials and the Crown prosecutor) and the journalists who reported the story.
- Of the newspaper items referring to *Miloszewski*, 38 (61%) refer to subparagraph 718.2(a)(i) of the *Criminal Code*. Twenty-three items appeared during the pre-sentence stage and 15 appeared post-sentence. The number of articles referring to the aggravating sentencing circumstance suggests that codification of this legislation had some impact on the print media coverage of *Miloszewski*.
- In addition to expressing strong support for subparagraph 718.2(a)(i), the various newspaper items contained a strong educational component about the new legislation, emphasized the landmark nature of the case, and recognised the symbolic message of the sentence.
- Although several newspaper items quoted the judgement, which stated that the sentence would not "eliminate racism from society," there was very little discussion of the limits of the law in addressing hate-motivated acts.
- The analysis also reveals that the print media pathologised and individualised the offenders in *Miloszewski*. Instead of understanding and reporting about the crime within its broader socio-cultural context, the media "explained-away" the incident by suggesting the crime was

[1] The term "items" will be used throughout this paper to refer to newspaper articles, stories, editorials and letters to the editor.

linked to the pathological behaviour of aberrant "skinheads".

- In the process of pathologising *Miloszewski*, the print media avoided the issue of systemic racism. By focusing on the more extreme aspects of the case, the media helped make "softer" (day-to-day) forms of racism "more palatable and so natural" (Li, 2001). This one-dimensional account of the crime suggests that consumers of newspaper coverage of *Miloszewski* received their information about subparagraph 718.2(a)(i) through a limited perspective that ignored issues of racism.

Discussion

- The findings suggest that criminal justice officials need to educate themselves and journalists to understand the socio-cultural context of hate motivated incidents in Canada, as well as the limitations of the law in combating this complex social issue. Future research should monitor media coverage of the aggravating sentencing circumstance – and hate motivated acts – to explore how the media characterises this legislation, and whether they continue to report about hate-motivated acts in a one-dimensional manner.

1.0 Introduction

Hate and bias crimes constitute a serious affront to individuals and groups who experience their deleterious affects. In addition to the harm they inflict upon the individual, hate-motivated activities also undermine the societal goals of promoting a just, fair, equitable, and socially cohesive society. As we embark on a new century "...it is clear that there is no place for the divisions that hate brings about" (Hate and Bias Activity Roundtable, 2000: 2).

Since the early 1990s, the federal government, in consultation with community and non-governmental organisations, has attempted to find appropriate methods for combating hate-motivated activities. In 1995, Parliament introduced sentencing reforms designed to assist judges with sentencing decisions. Included in these reforms was a provision requiring that judges consider "bias or hate motivation" as an aggravating sentencing circumstance. Subparagraph 718.2(a)(i) of the *Criminal Code*, which came into force in September 1996, states that "evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor" shall be deemed an aggravating circumstance.

Since its inception, subparagraph 718.2(a)(i) has been cited in several judicial decisions across Canada.[2] To date, the most publicised of these cases has been *R.* v. *Miloszewski*.[3] In January 1998, Nirmal Singh Gill died following an attack in the parking lot of the Guru Nanak Temple in Surrey, British Columbia. Five men, described in the media as having links to White Power – a white supremacist skinhead group – were arrested, and subsequently convicted of manslaughter for the incident.

In his judgement, British Columbia Provincial Court Judge William Stewart referred to subparagraph 718.2(a)(i) of the *Criminal Code* in sentencing the perpetrators for terms of 15 and 18 years imprisonment. In the sentencing decision, the court stated that subparagraph 718.2(a)(i) is: "more than simply a reaffirmation of the existing sentencing principles. It is a direction to sentencing judges to give substantial weight to the aggravating factors as the section now reflects the will of Canadians expressed by Parliament".[4]

Miloszewski attracted substantial coverage within the media, and particularly in the print media. In addition to reporting details about the crime and the sentencing decision, the print media characterised *Miloszewski* as a "landmark" case in terms of the court's application of the statutory aggravating circumstance. Despite this considerable media attention, there has been no attempt to analyse and discuss the print media coverage of this important case.

1.1 Purpose of Paper

The purpose of this paper is to report the findings from a case study analysis of newspaper coverage of *Miloszewski*. The paper explores the print media's portrayal of subparagraph 718.2(a)(i) of the *Criminal Code*, focusing on whether codification of the aggravating sentencing circumstance influenced newspaper reporting. In addition, the paper explores how the print media "made sense of" or interpreted the *Miloszewski* case, and represented the decision to readers. Most of the newspaper items did not focus solely on the aggravating sentencing circumstance, but instead on the offenders' link to white supremacist groups, the nature of the offence, and the court proceedings. Therefore, the second section examines how journalists conceptualised and constructed this case. In this respect, the newspaper coverage of the aggravating sentencing circumstance will be discussed within the context of the overall coverage of *Miloszewski*.

The paper addresses the following questions:

- Has codification of the aggravating sentencing circumstance been recognised within the print media?

[2] For a case law analysis of subparagraph 718.2(a)(i) since its inception, see J. Roberts, J. Van Dieen and A. Hastings, "Sentencing in cases of hate-motivated crime: An analysis of Caselaw arising from subparagraph 718.2(a)(i) of the *Criminal Code*" (Ottawa: Department of Justice Canada, 2000).
[3] *R.* v. *Miloszewski*, [1999] B.C.J. No. 2710 (B.C. Prov. Ct.) [hereinafter cited as *Miloszewski*].
[4] Ibid. at para. 141.

- How was subparagraph 718.2(a)(i) characterised in the print media coverage of *Miloszewski* (both pre- and post-sentencing)?
- How was *Miloszewski* portrayed within the print media?
- What are the more general implications of the media portrayal of *Miloszewski*?

Why Examine Print Media Coverage of the Miloszewski case?

Many people receive their information about law and crime through exposure to television, radio and newspaper items (Ericson, Baranek and Chan, 1991: 17). In turn, the knowledge that the public gleans from various media sources contributes to their perceptions of crime and the criminal justice system. Referring to the sentencing process, Roberts and Cole (1999: 22) argue that "[t]he treatment of sentencing by the news media is important to understand, for it affects public opinion. Most people, criminal justice officials included, acquire information about sentencing from the media" (see also, Ericson et al., 1991: 17). Roberts and Cole's comments aptly apply to the use of the aggravating sentencing circumstance in *Miloszewski*. Moreover, they underscore the importance of conducting media analyses of crime-related stories to determine how the media contributes to the public's understanding of the law and the criminal justice system.

1.2 Methodology

The methodology employed within this paper includes a quantitative and qualitative component. A quantitative analysis was used to reveal patterns within the content of the newspaper items. A qualitative content analysis helped provide further understanding of the print media's reporting of *Miloszewski* and the aggravating sentencing circumstance.

Data Collection Strategy

Two databases were searched to locate newspaper items referring to the *Miloszewski* case: the News Desk Press Clippings database at the Department of Justice Canada and the Canadian NewsDisc database.[5] The search period was from January 1998 to June 2000.

Newspaper items included within this analysis represent a wide spectrum of print media coverage of *Miloszewski*. Although items were collected with respect to all aspects of the case (from incident to post-sentence), the majority of items emerged during the sentencing hearing – when the facts of the case were presented. Due to database/coverage limitations, the search of News Desk Press Clippings and NewsDisc could not have captured all items referring to this incident. A more comprehensive review would involve a detailed search of newspaper items on microfiche.

1.3 Chronology of Events

Before discussing the results, it would be helpful to provide a synopsis of key incidents and dates for readers not familiar with the *Miloszewski* case.

- On January 4, 1998, 65 year old Nirmal Singh Gill was beaten and killed in the parking lot of the Guru Nanak Temple in Surrey, British Columbia. Mr. Gill, a caretaker who lived in a senior's residence on the temple grounds, was in the process of opening the temple for early-morning worshipers when the attack occurred.
- On April 21, 1998, the police arrested five men, described in the media as having links with a white supremacist, skinhead group (known as White Power) for the incident and charged them with second degree murder.
- On May 28, 1999, the five men arrested by police – Daniel Miloszewski, Robert Kluch, Radoslaw Synderek, Nathan Leblanc and Lee Nikkel – pled guilty to manslaughter.
- September 27, 1999 marked the start of the sentencing hearing. Crown counsel argued that the five accused should be sentenced to life in prison because their crime was motivated by racist hatred. The case was precedent setting in that it marked the first major case before the courts in which the judge was asked to consider the aggravating sentencing circumstance - subparagraph 718.2(a)(i) of the *Criminal Code*.
- On November 16, 1999, the five men who pled guilty to manslaughter were

[5] The News Desk application is a digital news clipping service available at the Department of Justice Canada. The News Desk carries over 20 newspapers, as well as some television stories. This database did not include comprehensive coverage of the Miloszewski case. The Canadian NewsDisk database contains the "full text of articles, columns, and features" from 14 different newspaper outlets across Canada.

sentenced to 15 and 18 year terms of imprisonment (the sentence for each perpetrator varied depending on their involvement in the offence). The court relied on subparagraph 718.2(a)(i) in arriving at the sentence which it imposed.

2.0 Results

The results of the analysis are divided into two sections. The first explores the print media portrayal of subparagraph 718.2(a)(i). The section begins with a quantitative account of the newspaper items relating to *Miloszewski*, followed by a qualitative examination of the newspaper reports. The second section explores how the print media conceptualised and constructed the *Miloszewski* case.

2.1 Frequency of Articles and News Item Outlets

A total of 62 newspaper items were found that related to *Miloszewski*. Forty-four items (71%) appeared before the five men were sentenced (pre-sentence), while 18 items (29%) were written after the Judge's sentencing decision (post-sentence). As expected, the largest proportion of items emanated[6] from newspaper outlets in British Columbia (the province in which the crime occurred). Indeed, three newspapers in British Columbia (Victoria Times Colonist, Vancouver Sun and The Province) accounted for 23 (37%) of the items. Twenty-three percent were found in the Vancouver Sun (N=14), while six items appeared in The Province (Vancouver) and 3 in the Victoria Times Colonist. The remaining articles were found within various newspapers from across Canada (e.g., The Globe and Mail, National Post, Edmonton Journal, Toronto Star, and Lethbridge Herald).[6]

2.2 News Sources

Before discussing coverage of the subparagraph 718.2(a)(i), it is important to understand which information sources the media used in reporting about this case. Information sources play a vital role in deciding what gets reported and how the information is characterised. "Authorised knowers," (ct., Ericson et al., 1991: 5) – people awarded voice by the media – help construct news items by communicating meaning to the information consumer (the newspaper reader). Information sources are therefore knowledge "gatekeepers" who decide what aspects of an event are "newsworthy."

Ericson et al. (1991: 186) identify five general types of news/information sources.

- Government or institutional officials (including individuals from the criminal justice system and other government agencies) become involved in the news process through their positions of "institutional authority."
- Journalists make news by deciding what to report and by acting as information sources.
- Political organisations (e.g., private corporations or political groups).
- Citizens without an organisational affiliation.
- Unidentified sources (e.g., an unnamed source).

The most prominent information sources for newspaper stories about crime are government officials and journalists. In their examination of print media source types, Ericson et al. (1991: 186) found that "[n]ews of crime, law and justice is primarily based on the accounts of government institutional definers, and/or the accounts of journalists themselves." Other research confirms that crime news is based primarily on information gleaned from official government or institutional sources. Fishman (1981) discovered that journalists rely heavily on law enforcement officials as information sources of crime news. "As the routine source of crime news, law enforcement agencies formulate for journalists what is 'out there' and what can be said about it" (Fishman, 1981: 372).

Employing Ericson's et al. (1991: 186) five categories of information sources, a review of the 62 newspaper items was conducted to determine the frequency of various information sources. Table 1 reports the findings of this analysis. Overall, information sources were mentioned 147 different times within the various items.[7] In some cases the same information source was cited repeatedly (e.g., the Crown prosecutor and the sentencing judge).

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[6] Please see appendix A for a complete list of newspaper cites and headlines included in this analysis.

[7] This examination of information sources excluded several references to police wiretap conversations between the five perpetrators. In many cases it was difficult to characterise the information source (e.g., was it the accused, the police who recorded the conversation, or the journalist who paraphrased the conversations?).

Government or institutional representatives were the largest information source within the newspaper items related to *Miloszewski* (N=63 or 43% of the information sources). Police accounts of the investigation and quotes from the Crown prosecutor and from the sentencing Judge comprised the majority of sources within this category. Journalists also proved to be a large information source (N=44 or 30% of the information sources), primarily via court observations, editorials, newswire articles, and as a source of information (e.g., investigation into the history of the accused). Less priority was awarded to citizens, such as the victim's and offenders' families (N=20 or 14% of the information sources), and private sector/political organisations, including anti-racism organisations (N=15 or 10% of the information sources). Unidentified sources accounted for five (3%) of the 147 information sources.

Table 1: Information Sources

Source Type	Frequency	Proportion (%)
Government/Institutional	63	43 %
Journalists	44	30 %
Citizens	20	14 %
Political Organisations	15	10 %
Unidentified	5	3 %
TOTAL	147	100 %

Overall, government/institutional spokespersons and newspaper journalists were the most common information source for the newspaper coverage of *Miloszewski*. However, counting news sources cannot reveal how particular incidents are characterised by the media. Therefore, this paper now examines how the aggravating sentencing circumstance was portrayed within the newspaper coverage of *Miloszewski*. Specifically, the section examines what the information sources say about this legislation. The section begins with a quantitative description of the items referring to subparagraph 718.2(a)(i).

2.3 Articles Referring to Subparagraph 718.2(a)(i) of the *Criminal Code*

Of the 62 items included in this analysis, 38 (61%) refer to subparagraph 718.2(a)(i) of the *Criminal Code* either directly by citing the legislation or indirectly by discussing the court's sentencing decision. Of the 38 items that refer to the aggravating sentencing circumstance, 23 appear during the pre-sentence stage and 15 appear post-sentence.

2.4 Pre-Sentence Coverage

Newspaper items referring to the aggravating sentencing circumstance during the pre-sentence stage (N=23) can be characterised in three ways:

- Those with an information/educational component – describing the role and purpose of the legislation.
- Items describing how *Miloszewski* was the most important case to date related to subparagraph 712.2(a)(i) of the *Criminal Code*.
- One item (appearing in several newspapers) expressing disagreement with hate-motivated legislation.

Articles with an Educational Component

Several pre-sentence newspaper items referring to the aggravating sentencing circumstance contained an "educational" component. For instance, one item quoted the Crown, who argued that the five perpetrators should be "more severely punished because their attack was motivated by racism. Crown counsel Ron Caryer said he will use a section of the *Criminal Code* passed in late 1996 to seek longer sentences at a hearing set for September" (Canadian Press, *Globe and Mail*, May 28, 1999). Another item described how the judge was being asked to consider "...a clause in the *Criminal Code* that allows a more severe sentence for a crime motivated by racial hatred and other prejudices" (Bolan, *Vancouver Sun*, September 30, 1999: B1). Finally, one item provided detailed information on how the aggravating sentencing circumstance would be employed during the sentencing hearing:

> Section 718.2 of the *Criminal Code* states that the court must take into account aggravating circumstances of an offence, including a motivation of hate. However though, the Crown must establish beyond a reasonable doubt that the offender was motivated by bias, prejudice or hatred against the victim (Theodore, *Edmonton Journal*, September 29, 1999: A15).

The Precedent Setting Nature of the Case

Several pre-sentence items conveyed the importance of subparagraph 718.2(a)(i) for the *Miloszewski* case. As one item noted,

> ...[the Crown] said the case is *precedent-setting* in that it is the first major matter before the courts in which the crown is arguing for a more severe penalty because the crime was motivated by hatred or racial bias. It has been used a few times but not on the scale of a case like this, Cayer told reporters, referring to section 718.2 of the *Criminal Code* (Bolan, *Vancouver Sun*, September 28, 1999: B1; see also, Theodore, September 29, 1999: A15 – my emphasis).

Two other items reiterated the landmark status of the case:

> This is a first for a Canadian court. The Crown attorney's have asked Mr. Justice William Stewart to jail all five for life, citing a new clause in the *Criminal Code* that allows for a more severe sentence for a crime motivated by racial hatred (Armstrong, October 7, 1999).

> The case is the first in Canadian courts where a prosecutor has asked for a more severe sentence because killers acted out of racial hatred. Life sentences are not usually given for manslaughter, but the *Criminal Code* was changed in 1996 to allow sentences to be increased for bias and hate crimes (Armstrong, *Globe and Mail*, October 16, 1999).

One information source characterised the sentencing hearing as constituting an important hurdle, which would test the aggravating sentencing circumstance. A representative from the West Coast Coalition for Human Dignity was quoted as saying that "it [*Miloszewski*] is the strongest case which can *test the sentencing laws*...The solution has to start with these five being punished to the full extent of the law" (Grewal, October 12, 1999: A19 - my emphasis).

Disagreement with Hate Crime Legislation

Only one pre-sentence item (appearing in several different newspapers) challenged the underlying principle of the aggravating sentencing circumstance. In an editorial (*Edmonton Journal*, October 8, 1999), "Murder Victims are all Equal," the author disagreed with the Crown's request for heavy sentences because the offence was motivated by hate:

> The vicious hatred these five men displayed the night they killed Nirmal Singh Gill should turn all our stomachs. But it makes no sense to impose stricter sentences on killers who kill for reasons of racial prejudice than on those who kill for greed or revenge or malice. Death is the greater equalizer, and every murder victim is as dead as the next. The *Criminal Code* already gives judges the power to impose life sentences for manslaughter. It's a sentence these men richly deserve – not because they're neo-Nazis, but because they are vicious thugs (Note: this editorial also appeared in the *Halifax Daily News* on October 11, 1999: p.12, and in the *Calgary Herald*, October 12, 1999: A25).

2.5 Post-Sentence Reaction

Newspaper items referring to the aggravating sentencing circumstance (N=15), and appearing after the court's decision emphasised the precedent-setting nature of the decision and its symbolic value. This section discusses these themes, as well as the implications of recognising the symbolic value of the law. The content of several items expressing discontent with the decision is also discussed.

The Decision was Precedent-Setting

As found with many pre-sentence items, several post-sentence items cited the precedent setting nature of *Miloszewski* and, in the process, acknowledged the impact of the aggravating sentencing circumstance. As a *Calgary Herald* item (November 17, 1999: A4) noted,

> Crown counsel Ron Caryer said the ruling was a *benchmark* in that it was the first time Section 718.2 of the *Criminal Code* – which allows for a more severe penalty for hate crimes – had been used in a crime of this magnitude. The finding he made is a *benchmark*, said Caryer. If indeed a court finds a crime is hate motivated, then that raises the standard (see also, Bolan, *Vancouver Sun*, November 17, 1999: A1 – emphasis added).

Another item concurred:

> Crown counsel Ron Caryer said Stewart's decision was precedent setting because he applied Section 718.2 of the *Criminal Code*, passed in 1996, in determining the sentence. 'There is no question it is the biggest case of its kind,' Caryer said. 'These are very significant sentences'...Stewart stressed that the *Criminal Code* provision defining hatred as an aggravating factor in sentencing 'is a direction to the courts of this country, as expressed by Parliament, that a sentence ought to be increased if the offence was motivated by bias (Bolan, *Vancouver Sun*, November 17, 1999: A1).

One post-sentence item related the importance of the sentencing decision for future cases dealing with hate motivation. Crown counsel was quoted as saying that the sentences are "...considerably stiffer than normal and pointed out Judge Stewart's statement that hate-motivated crime is the worst kind of manslaughter." He continued, "those comments will have a significant effect on future sentences for crimes dealing with hate" (Armstrong, *Globe and Mail*, November 17, 1999). Another item, primarily about the decision of two out of the five men to appeal their decision, referred to the sentence as "*unprecedented*" and the first "*major*" case where a judge acknowledged aggravating factors when increasing a sentence "beyond those that would otherwise have been given" (Bolan, *Vancouver Sun*, March 21, 2000: B1 – emphasis added).

One newspaper item differed from others in that it focused entirely on subparagraph 718.2(a)(i). Titled, "Jail Terms for Neo-Nazis 'Breathe Life' into New Law: The change compels judges to consider hate or bias in crafting new sentences," (Bailey, *Vancouver Sun*, November 18, 1999), the author suggested the decision might help other judges interpret the aggravating sentencing circumstance. The item quotes the sentencing judge, who stated that the legislation is "...more than simply a reaffirmation of existing sentencing principles...it is a direction to the courts of this country, as expressed by Parliament, that a sentence ought to be increased if the offence was motivated by bias, prejudice or hate." A lawyer was quoted saying the decision "breathes life" into the legislation: "If there are any crimes like this, even on a lesser matter, the Crown will bring out the sentence and say the judge should have to regard to this case" (Bailey, *Vancouver Sun*, November 18, 1999: A5).

Symbolic Message

Several post-sentence newspaper items emphasised the symbolic value of the *Miloszewski* decision. The symbolic function of the law represents the "...state's sending a signal on behalf of a 'popular consensus' about the moral status of a particular act. In the case of criminalization, the message to be conveyed is that this particular act is abhorrent" (Snider, 1991: 254). In *Miloszewski* the message was that society will not tolerate hate-motivated crimes.

One post-sentence item quoted the Crown as saying: "I would hope that it would send a clear message. The sentences are higher than what you would normally get in a manslaughter case. The judge gave a very reasoned judgement. The message is that in Canada we will not tolerate people acting out on their own intolerance" (*The Province*, November 17, 1999: A4). Similarly, another item also quoted Crown counsel, who suggested that the decision "*sends a message*" (Moore, *Toronto Star*, November 17, 1999 – my emphasis). Another item quoted the sentencing judge, who stated:

> ...what can be achieved by what I am doing today is to send a loud, clear and *unequivocal message*, not only to these five accused but to others who share their views, that if they commit acts of violence against persons or property out of hatred they will be condemned and punished severely (Jamieson, *Ottawa Citizen*, November 17, 1999: A9 – my emphasis).

In several items Balwant Singh Gill, president of the Guru Nanak Temple, expressed satisfaction with the message delivered by the court's sentencing decision. "That [decision] *sends a message* to everybody out on the street (that) anyone who commits such a hatred crime will be punished..." (Moore, *Toronto Star*, November 17, 1999; see also, Montreal Gazette, November 17, 1999: A10 – my emphasis). In another article, the same source stated that he was happy that the judge acknowledged that "hatred motivated the killing and handed down more severe sentences that he would otherwise have done...I am satisfied that they [the five men] still get some imprisonment and that still *sends the message* out that this will not be tolerated" (Bolan, *Vancouver Sun*, 1999: A2 – my emphasis). However, despite this support, the President of the Temple argued the five should be jailed "for the rest of their lives...These idiots shouldn't be on the streets" (Armstrong, *Globe and Mail*, November 17, 1999).

Implications of Recognising the Symbolic Value of the Law

There were very few items that discussed what the expressive/symbolic function of the law could achieve in terms of addressing the incidence of hate-motivated violence and racism in society. Some items quoted the judge, who stated: "I am not so naïve as to believe that any sentence I pronounce will eliminate racism from our society" (Jamieson, *The Ottawa Citizen*, November 17, 1999: A9; see, also, *Vancouver Province*, November 17, 1999: A4; Armstrong, *The Globe and Mail*, November 17, 1999). However, these items did not explore the meaning of this statement and its implications for the sentencing decision and the aggravating sentencing circumstance.

There is an important implication to the lack of discussion of what the law can achieve through its symbolic function. By simply reporting that the law conveys a symbolic message, the media eschew the question of what this value can achieve. However, feminists remind us of the limits of the law (and the criminal justice system) through their analyses of initiatives to address domestic violence. In discussing police intervention in cases of domestic violence, Currie and MacLean (1994: 312) argue that, "[p]olice intervention is inadequate because it does not challenge the fundamental processes that perpetuate domestic violence." Similarly, Snider (1991: 306) draws attention to the fact that, "...feminist experience with criminal law reform in the areas of domestic violence and sexual assault poses questions about the potential effectiveness of the criminal law in achieving meaningful social change in attitudes towards violence against women." With respect to *Miloszewski*, the arguments suggest that there is a limit to what formal legal sanctions can achieve in addressing the complex social problems that are associated with hate-motivated acts. Unfortunately, this limitation was not discussed in the print media coverage of *Miloszewski* – i.e., what could be achieved through the symbolic message and the limits of the law in addressing hate-motivated acts.

Discontent with the Sentence

Despite the fact that a majority of post-sentence items expressed support for the court's decision and for subparagraph 718.2(a)(i), several items nevertheless expressed dissatisfaction with the decision. In one item, a law professor from the University of British Columbia, who challenged the importance of the aggravating sentencing circumstance, stated that "...prior to the amendments, most judges would have considered this as a particularly aggravating case" (Bailey, *Vancouver Sun*, November 18, 1999: A5).

Dissatisfaction with the judge's decision was expressed primarily through editorials and letters to the editor (non-government/official institutional sources). Although these items did not criticise subparagraph 718.2(a)(i) directly, they suggested that the punishment imposed by the court was too short and that it did not convey the appropriate (symbolic) message. In one editorial, titled "And Throw Away the Key," the author argued *Miloszewski* was an "ugly and cold-hearted" hate crime and that the five men deserved longer sentences. The author added:

> Last week thousands of Victorians gathered at the cenotaph to pay their respect to those who fought against Nazi tyranny, against the evil and cowardice that allows moral weaklings like those in Surrey to lay blame for their own failings at the feet of strangers whose only offence it is to be different. That these neo-Nazis could one day be allowed to walk the streets of B.C. just a few short years after being convicted of a racially motivated killing is an insult to those Canadians who died for freedom" (*Victoria Times Colonist*, November 17, 1999: A14).

In a letter to the editor the author argued that, "no justice was done and the courts continue to milk-sop way to administer ineffective rulings" (*The Province*, November 18, 1999: A49). Another argued: "if Judge William Stewart had really taken into consideration the long cultivated 'hate, fear and ignorance' shown by these skinheads, he would see that 12-15 years in prison is not nearly enough time to change their racist views, if they can be changed at all, or to ensure society is not once again vulnerable to the violent actions of these 'unrepentant' criminals" (*Vancouver Sun*, November 19, 1999: A22). Finally, in another letter to the editor the writer expressed the view that, "once again, our legal system rears its insane, mind-boggling and illogical head." The writer continued, "giving these killers the opportunity to be out on day parole in 30 months and full parole within four years *serves no message* to others who harbour such hatred and condone violence" (*Vancouver Sun*, November 22, 1999: A15 - emphasis added).

3.0 How the Print Media Portrayed the *Miloszewski* Case

The first section of this paper focused on the newspaper reporting of the aggravating sentencing circumstance. In other words, what was the overall context within which discussions of subparagraph 718.2(a)(i) and *Miloszewski* emerged? The analysis now shifts to contextualize the discussion by examining how the print media characterised the overall story. A majority of the newspaper items included in this analysis were not focused exclusively on subparagraph 718.2(a)(i), but instead on the offenders' link to white supremacist groups, the nature of the offence, and the court proceedings. Therefore, it is important to understand the overall content of the items, within which discussions of the aggravating sentencing circumstance occurred – discussions of subparagraph 718.2(a)(i) emerged within the broader coverage of *Miloszewski*.[8] As Roberts and Doob (1990: 452) suggest, "news media treatment of sentencing [and legislation] must be seen in the context of media coverage of crime."

The analysis in the last section reveals that newspaper items related to *Miloszewski* individualised and pathologised the five men who were sentenced for the crime. As a result, the media "explained-away" the event as an individual aberration, and in the process avoided the issue of systemic racism. Implications of pathologising the crime and avoiding the issue of racism will also be outlined. The section begins with an explanation of media coverage of crime-related stories.

Media Coverage of Crime-Related Incidents

It has been well documented by media researchers that the media report frequently about atypical or deviant behaviours (for example, see Cavender, 1981; Cohen and Young, 1981; Ericson et al., 1991). Media consumers therefore receive a steady diet of sensational, crime-related stories. "A great deal of what is consumed and made integral to daily life are stories of crime, law and justice. The majority of news items focus on crime and other forms of human transgression" (Ericson, 1995: xi). Journalists commonly rely upon individualistic or one-dimensional accounts of the crime-related stories they cover. While interpreting an event and attempting to make sense of what happened – and why – the media frequently pathologizes crime as an individual aberration. In his analysis of media reporting of the "scared straight" phenomenon, Gray Cavender (1981: 431) argues that journalists convey an ideological message that crime is "...an individual choice that has little relationship to any social variables. Criminals are portrayed in a one-dimensional manner as evil, vicious, and barely human."[9]

A corollary of this individualisation of crime is that the media "explain-away" incidents, as opposed to understanding and reporting them within their broader socio-cultural context. Ericson et al. (1991: 8) explain the process and consequences of media accounts that individualise and pathologise crime and deviance:

> A lot of news consists of moral character portraits: of demon criminals, of responsible authorities, of crooked politicians, and so on. The emphasis of individual morality is not only a dramatic technique for presenting news stories as serial narratives involving leading actors but also a political means of allocating responsibility for actions and attributing accountability. Moreover... personalization combined with an event-orientation 'produces the appearance (or collective representation) that troublesome persons rather than troublesome social structures are at fault. This mystifies the social roots of trouble in a society that is structurally unequal' (Pfohl, 1985: 353). By individualising problems on a case-by-case basis, the news...[rules]...out systemic and structural accounts that might question the authority of cultural values, the state, and the news and legal institutions.

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[8] Of the 62 newspaper items included in this analysis, only one was devoted exclusively to subparagraph 718.2(a)(i). See, Bailey, Ian "Jail Terms for Neo-Nazis Breathe Life into New Law: The Change Compels Judges to Consider Hate or Bias in Crafting Sentences," *The Vancouver Sun*, November 17, 1999: A5.

[9] "Scared straight" was a program in the United States aimed at "shocking" or deterring youth from participating in crime. Young people who had experienced conflict with the law visited a penitentiary, where they listened to inmates tell stories about the "consequences of a life in crime" (Cavender, 1981).

Moral character portraits, individualisation, pathologisation and allocating responsibility are processes that the print media used to "explain-away" the *Miloszewski* case.

Pathologising Miloszewski - Explaining-Away the Crime

Newspaper items related to Miloszewski frequently reported about the association of the five men with white supremacist groups. In doing so, the print media attributed the actions of the perpetrators to their association with a fringe element. By focusing on the perpetrators' skinhead status, newspaper items pertaining to *Miloszewski* pathologised and individualised the crime, and avoided discussions of the relationship between the incident and problems of racism in Canada. It is important to recognise and denounce the seriousness of the *Miloszewski* case, however it is also instructive to understand how it represents and relates with systemic racism. In this respect, racism must be examined and understood as:

> various – in kind, in disposition, in emotive affect, in attention, and in outcome. Moreover, racisms are not unusual or abnormal. To the contrary, racist expressions are normal to our culture, manifest not only in extreme epithets but in insinuations and suggestions, in reasoning and representations, in short, in the microexpressions of daily life. Racism is not – or, more exactly, is not simply or only – about hate (Goldberg, 1997: 21; as quoted in Kobayashi and Peake, 2000: 393).

Following the arrest of the five men, the police were quoted in the newspapers as describing the crime as a "random attack by skinheads" (*Charlottetown Guardian*, April 23, 1999: B5). One item appearing shortly after the arrest identified the five men as being "...connected by police to some of the most violent and racist white-supremacist groups in North America and Europe" (Crenetig and Mata, *The Globe and Mail*, April 22, 1998: A1). Further police statements to newspaper journalists suggested that the "men were believed to belong to White Power, a supremacist, skinhead group" (*Lethbridge Herald*, May 28, 1999).

Newspaper items that followed the arrest of the five men continued to emphasise their links to skinhead and white supremacist groups. In one item following the guilty plea (see, Papple, Sarah, "Five skinheads guilty: Plea bargain sees thugs convicted of manslaughter," *The Province* (Vancouver), May 28, 1999: A8), the author emphasised that the five men were 'skinheads', and that the sentencing hearing could reveal links to organised racist groups. "If we can see the evidence of how the hate groups work, and what organisations are involved, it will be very telling, said spokesman Harry Abrams [from the B'nai Brith League for Human Rights]. I think organisations of men in three-pieced suites will be in charge of this fringe element" (see, also Papple, Sarah, "Real Supremacists wear business suits, say police in B.C." *The Edmonton Journal*, October 24, 1999: A8). Similarly, other items associated the five men with white power and to "...other white supremacist groups, including the Northern Hammerskins, the Aryan Nations and the Heritage Front" (Canadian Press, *Calgary Herald*, May 28, 1999).

Items appearing during the sentencing decision reiterated the 'skinhead' status of the five men who killed Nirmal Singh Gill. "Skinhead case in judge's hands: Crown counsel issues warning of belated shows of empathy," was the title of one item just prior to the sentencing decision (Moore, *The Halifax Chronicle-Herald*, October 16, 1999: A13). Similarly, items appearing after the sentencing decision remained focused on the skinhead affiliation of the five men, as illustrated in the following titles:

> Skinheads jailed in death of Sikh: 'Moronic' attack on caretaker called racially motivated (Moore, *The Toronto Star*, November 17, 1999).

> Skinheads get prison terms in Sikh's killing: B.C. judge gives five men 12-to-15 year sentences for hate crime against temple caretaker (Armstrong, *The Globe and Mail*, November 17, 1999).

> Five skinheads get hard time for beating death of Sikh (Jamieson, *National Post*, November 17, 1999: A4).

In general, several newspaper items concerning *Miloszewski* focused on the association of the five perpetrators with organised skinhead groups. These items suggest that from the outset the print media attempted to "make sense" or interpret the crime by focusing on the 'skinhead' status of the five perpetrators. However, in juxtaposition to this focus, the

court noted during sentencing that the five were not in any sense an organised group:

> "...these five like-minded young men, despite their swaggering and bragging, were *not in any real sense an organised gang*. None of the five can, on the evidence before the court, properly be characterised as a leader. Rather they were a group of social misfits who congregated for the purpose of consuming alcohol and fantasising about establishing a white supremacists society and ultimately a world in which these small-minded, frightened men would be in power" (Armstrong, *Globe and Mail*, November 17, 1999; see also, *Vancouver Sun*, November 18, 1999: A23 - my emphasis).

Dangerousness and Violence - More Pathology

Further evidence of the newsprint media's attempt to "explain-away" or "pathologise" Miloszewski emerged in their explanations of what "went wrong" or what caused the crime. For instance, in explaining why the crime occurred some items explored the family background of the five perpetrators (see, for example, Armstrong, "Taught tolerance, Sikh slayer's parents say son of Polish immigrants had trouble fitting into multicultural society, schools, court told," *The Globe and Mail*, October 7, 1999). Daniel Miloszewski, who moved to Canada from Poland with his family, "...had problems adjusting to Canada's multiracial society from the beginning." "By the time he was 19, Daniel Miloszewski's adjustment problems had taken a sinister turn. He cut his hair short, bought his boots and leather jacket and began to listen to music with racist lyrics" (Armstrong, October 7, 1999). With this characterization, the media leaves open the interpretation that the stress of living within Canada's diverse society somehow contributed to the crime - that diversity caused divisiveness and undermined unity (cf. Li, 2001). Unfortunately, this avoids the issue of systemic racism and only provides a "simplistic but convenient explanation" (cf. Li, 2001) as to why some Canadians perpetrate acts of racial violence.

In a continued effort to "make sense" of the crime, one item cited the mother of Robert Kluch, who attributed the crime to "...her son's friends and the death of her husband..." (Bolan, *Vancouver Sun*, October 15, 1999: A9; also see Moore, *The Gazette*, October 15, 1999: A10). Another item quoted the mother of one of the five men, who noted that her son "...had difficulty socialising with other children and was diagnosed with attention deficit disorder and other learning disabilities in school. He dropped out at age 14, already addicted to drugs and alcohol."

Some items emphasised the pathology of the five men by focusing on the 'danger' that they represented to the community. In a sensationalistic tone, one item noted: "Security was tight at the court, with armed guards, a security gate and a glass wall separating the public gallery from the five men, the lawyers and the judge. One security guard wore a bullet-proof vest" (Matas, September 28, 1999). In the same item, Crown counsel was quoted as saying the five men were "exceptionally dangerous, violent and callous individuals."

Other items cited the inability of the five men to accept responsibility for their actions as evidence of their dangerousness and pathology. "The lack of remorse and attitudes displayed by these five...is *frighteningly menacing*," the Crown was quoted in one item (Matas, *The Globe and Mail*, September 28, 1999 – my emphasis). Similarly, one of the accused was quoted as saying: "I have no remorse" (Bolan, September 30, 1999: B1). The message was that the explanation for the crime could be found in the ruthless and violent character of the five perpetrators.

During the police investigation, and while the five men awaited trial, the police obtained wiretap authorisations to record conversations between the co-accused and undercover police officers. The media frequently reported these conversations in their construction of the five men as evil and pathologically out of control. In one item Robert Kluch (one of the perpetrators) was quoted as saying it would be a good idea to murder 100 Indo-Canadian children at a school (Bolan, *Vancouver Sun*, September 29, 1999: B1). The item also referred to Kluch's violent past and how he had committed several hate-motivated acts. The overall tone of the item was that the incident could be explained through the out of control and extremely violent behaviour of five skinheads.

The final example of pathologising the five perpetrators was found within an item that discussed the academic record of one of the five men (see Bolan, Kim, "Skinhead killer won scholarship for marks earned while in prison," *Vancouver Sun*, October 14, 1999: A5). In the story the journalist questioned how it was possible for one of the five "skinheads" to be recognised for their academic performance while in custody awaiting sentencing (the individual won an award for academic achievement).

The tone of the article was that it seemed impossible, even inappropriate to recognise the academic achievements of a savage, skinhead killer.

Miloszewski as an example of Racism

Not all of the items pertaining to *Miloszewski* ignored the issue of racism in society. However, for the most part these stories discussed how this individual act was racially motivated, without attempting to discuss the problem of systemic racism. In one item Balwant Singh Gill, president of the Guru Nanak Sikh Temple, was quoted as saying that "...the temple's congregation was 'very, very upset' about the killing and the racism. These people [the five accused] are so filled with hatred in their minds,' he said. 'It is very, very scary'" (Matas, *The Globe and Mail*, September 28, 1999).

Defence counsel in the *Miloszewski* case also drew attention to the broader issue of racism, mainly in an attempt to convince the judge to impose a lesser sentence than the Crown was advocating. Defence counsel David Butcher argued that "these offenders have inherited some very old prejudices... Unfortunately, the reality is that racism and racist-motivated crime is not unique" (Moore, Canadian Press Wire, October 14, 1999). Another item quoted the same defence lawyer as saying: "It is in my opinion that you [the judge] should have some understanding of the history of racism in this community and in this country... [racism]...is entrenched in every aspect of our society." The defence continued, "it is apparent that such a sentence will do nothing to eliminate racism in this community or nationally" (Bolan, *Vancouver Sun*, October 15, 1999: A9; also see Moore, *The Gazette*, October 15, 1999: A10).

A *Vancouver Sun* item (Grewal, October 12, 1999: A19) criticised the paucity of analyses and editorials "expressing revulsion and outrage at this racial violence." The item quotes a human rights advocate who argued that, while "big names of white supremacist groups attract a fair amount of media attention, many hate-motivated crimes are done by people not associated with any particular hate groups. It is easier for people to dismiss white supremacists as pathologically unstable or crazy. It is harder to accept that regular people can perpetrate violence based on the notion of superiority." Although the article draws attention to the issue of racial violence, it does not treat the case as part of a continuum of systemic racism within Canadian society.

4.0 Conclusion and Discussion

In general, the findings reported here suggest that codification of the aggravating sentencing circumstance was recognised by print journalists as an important reform. Reported primarily through the accounts of government/ institutional spokespersons (e.g., the Crown prosecutor) and newspaper journalists, four-fifths (61%) of the 62 newspaper items refer to subsection 718.2(a)(i), either directly or in the context of discussing the sentencing decision.

Most stories supported the application of subparagraph 718.2(a)(i) in the *Miloszewski* sentencing decision. In addition to a strong educational component, the stories emphasised the landmark nature of the case in terms of the aggravating sentencing circumstance. Unfortunately, there was little discussion about the limits of the law in combating hate-motivated acts. Although several items quoted the sentencing judge, who recognised that his decision would not eliminate racism within society, there was no attempt to discuss the limits of the law in addressing hate-motivated acts. It is vital for media consumers (and the general public) to understand that the law is not a panacea for complex social problems.

There was some discontent reported with aspects of the sentence lengths, but there was very little evidence of any disagreement with the application of the aggravating sentencing circumstance to this particular case.

Although the print media expressed support for the aggravating sentencing circumstance, they individualised and pathologised the case, effectively avoiding discussion of how the incident relates to the problem of racism in Canada. Therefore, while newspaper coverage of *Miloszewski* may have contributed to greater awareness of hate crime, it portrayed these incidents as highly individualistic and pathological acts with little association to broader socio-cultural issues of systemic racism.

The print media portrayal of *Miloszewski* carries two implications for the reporting of hate-motivated incidents and the aggravating sentencing circumstance. First, by pathologising the five men the print media effectively "explained-away" the crime. It is important to recognise and denounce the seriousness of *Miloszewski*, however it is also instructive to understand how it represents and relates with systemic racism. In this respect, racism and racist expressions must be examined and understood as various "...in kind, in disposition, in emotive affect, in intention, and in outcome" (Goldberg, 1997: 21; as quoted in Kobayashi and Peake, 2000: 393). "This understanding of racism as an active process diffused throughout a very wide range of social actions requires, therefore, a way of viewing the wider processes that influence the microenvironment for those expressions" (Kobayashi and Peake, 2000: 393).

Instead of making sense of *Miloszewski* within a racist society, the majority of newspaper items suggest that something "went wrong" within the individuals. The media individualised the crime by linking the behaviour of the five men to their fringe group (white supremacist) affiliation, as well as to their individual pathologies. To help make sense of the crime the print media portrayed the five men as "evil, vicious, and barely human" (cf. Cavender, 1981: 431). There was some evidence of newspaper items that drew attention to issues of racism, although these discussions were rare and contained limited analyses of the issues. In his analysis of violent racism, Benjamin Bowling (1999: 230) reminds us that,

> ...the experience of violent racism is not reducible to an isolated incident, or even a collection of incidents. Victimization and racialization – the process by which a person becomes a victim of this form of crime are cumulative, comprised of various encounters with racism, some of which may be physically violent, some lying only at the fringes of what most people would define as violent or aggressive. Some of these experiences are subtle and amount to no more than becoming aware that someone is annoyed or disgusted by the presence of black people or fleeting instances such as the half-hearted racist joke or epithet. At the other end of this continuum are the more easily remembered instances when racism is coupled with physical aggression or violence.

Pathologising and individualising incidents such as *Miloszewski* perpetuates an erroneous belief that the only thing preventing an equal, diverse and just society is the activities of a perverse few. Therefore, the findings suggest that criminal justice officials (shown to be the main sources of information in this analysis) and

journalists must work together to understand the links between hate motivated crimes (however extreme they may be) and systemic racism. The media and their information sources represent "...tremendous potential for overcoming racism through improved knowledge and communication..." (cf. Kobayashi and Peake, 2000: 398).

The second implication of the print media portrayal of *Miloszewski* relates to reporting of the aggravating sentencing circumstance. People who read about subparagraph 718.2(a)(i) in the print media coverage of *Miloszewski* did so within a context of explaining-away the crime as a pathological aberration. By portraying this incident as an extreme act, the media – and the official sources that helped construct the story – made softer versions of racism (i.e., institutional racism) "more palatable and so natural" (cf. Li, 2001). However, as Li (1995: 7) suggests, "in reality, racism is most forcibly articulated as an ideology and practice embedded in social institutions." In this case, there appears to be minimal "symbolic value" in the reporting of *Miloszewski* and subparagraph 718.2(a)(i). The message is the society will not tolerate extreme forms of racism, but what about the everyday realities of racism in Canadian society?

Overall, the media coverage of *Miloszewski* begs the question of whether the public will associate the aggravating sentencing circumstance with sensational and individual acts of racial violence, as opposed to the general problem of hate-motivated acts. Moreover, how do (will) the media report about less sensational hate-motivated crimes, if at all? How do (will) the media report on hate-motivated acts that are related to issues of gender or sexual orientation? In either case, newspaper consumers of *Miloszewski* received their information through a sensationalistic and one–dimensional account of the crime. This suggests that future research should monitor media coverage of the aggravating sentencing circumstance – and hate motivated incidents – to explore how the media characterise this legislation and whether they continue to report about hate-motivated acts in a one-dimensional manner.

Appendix A

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